

asking routine questions concerning administrative functions or procedures.

(f) The DAB will not consider any issue not raised in the parties' briefs, nor any issue in the briefs that could have been, but was not, raised before the ALJ.

(g) If any party demonstrates to the satisfaction of the DAB that additional evidence not presented at such hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at such hearing, the DAB may remand the matter to the ALJ for consideration of such additional evidence.

(h) The DAB may remand a case to an ALJ for further proceedings, or may issue a recommended decision to decline review or affirm, increase, reduce, or reverse any penalty or assessment determined by the ALJ.

(i) When the DAB reviews a case, it will limit its review to whether the ALJ's initial decision is supported by substantial evidence on the whole record or contained error of law.

(j) Within 60 days after the time for submission of briefs or, if permitted, reply briefs has expired, the DAB will issue to each party to the appeal and to the Commissioner a copy of the DAB's recommended decision and a statement describing the right of any respondent who is found liable to seek judicial review upon a final decision.

[61 FR 65472, Dec. 13, 1996]

§ 498.222 Final decision of the Commissioner.

(a) Except with respect to any penalty or assessment remanded to the ALJ, the DAB's recommended decision, including a recommended decision to decline review of the initial decision, shall become the final decision of the Commissioner 60 days after the date on which the DAB serves the parties to the appeal and the Commissioner with a copy of the recommended decision, unless the Commissioner reverses or modifies the DAB's recommended decision within that 60-day period. If the Commissioner reverses or modifies the DAB's recommended decision, the Commissioner's decision is final and binding on the parties. In either event, a copy of the final decision will be served on the parties. If service is by

mail, the date of service will be deemed to be five days from the date of mailing.

(b) There shall be no right to personally appear before or submit additional evidence, pleadings or briefs to the Commissioner.

(c)(1) Any petition for judicial review must be filed within 60 days after the parties are served with a copy of the final decision. If service is by mail, the date of service will be deemed to be five days from the date of mailing.

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final action of the Commissioner will be sent by certified mail, return receipt requested, to the SSA General Counsel. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the SSA General Counsel receives two or more petitions within 10 days after the final decision is issued, the General Counsel will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

[61 FR 65472, Dec. 13, 1996]

§ 498.223 Stay of initial decision.

(a) The filing of a respondent's request for review by the DAB will automatically stay the effective date of the ALJ's decision.

(b)(1) After issuance of the final decision, pending judicial review, the respondent may file a request for stay of the effective date of any penalty or assessment with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of such a request will automatically act to stay the effective date of the penalty or assessment until such time as the ALJ rules upon the request.

(2) The ALJ may not grant a respondent's request for stay of any penalty or assessment unless the respondent posts a bond or provides other adequate security.

(3) The ALJ will rule upon a respondent's request for stay within 10 days of receipt.

[61 FR 65472, Dec. 13, 1996]